

**Letter of Findings Number: 02-20140101P
Late Payment Penalty
For Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is suspended by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration – Late Payment Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a late payment penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana S corporation. Taxpayer filed its 2008 and 2011 returns late. The Department assessed late payment penalties for both years, but then waived the penalty relating to the 2008 year as a matter of routine courtesy. Taxpayer protests the remaining assessment of the \$250 penalty for 2011. A hearing was held on Taxpayer's protest. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration – Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of its income tax for 2011. Taxpayer states that it had timely submitted the missing returns, including the 2011 return.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

...

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively

establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

Taxpayer provided additional documentation before and after the hearing to demonstrate that it had timely filed its returns. To show that it filed the 2011 return before the April 15, 2012 due date, Taxpayer presented a copy of a letter dated March 28, 2012 from its accountant to Taxpayer that had attached a copy of an unsigned 2011 return that the accountant had prepared for Taxpayer. Taxpayer stated that it had promptly filed that return – prior to the April 15, 2012 deadline – as prepared by its accountant. Taxpayer, however, did not retain any copies of the signed and dated returns it states that it submitted to the Department, nor any proof that the returns had been submitted to the Department. The Department only has a record of a 2011 return postmarked September 20, 2013, which is over a year late. Apart from the 2008 and 2011 returns, Taxpayer's other returns were timely filed, some with extensions.

In this case, the Department determined that Taxpayer did not timely file an Indiana adjusted gross income tax return for 2008 and 2011. The Department considered the filings to be late payments and so imposed penalties under IC § 6-8.1-10-2.1. As a matter of courtesy, the Department waived the assessment for the first penalty imposed on the late filing of the 2008 return. Since the 2008 and 2011 returns were both filed in September 2013, and because the Department waived the penalty associated with the 2008 late filing, this final determination will extend the same courtesy to Taxpayer and waive the \$250 penalty associated with the late filing of the 2011 return. However, the Department takes this opportunity to notify Taxpayer that penalty may be imposed in the unlikely event that this scenario occurs again.

FINDING

Taxpayer's protest is sustained.

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